

COUNTY COUNCIL

OF

DORCHESTER COUNTY, MARYLAND

FILED

2010 MAR -5 AM 9: 18

CIRCUIT COURT
DORCHESTER COUNTY

2010 Legislative Session,
Legislative Day 1, 2010

Introduced By: County Council

BILL NO. 2010 - 5

An Act of the County Council of Dorchester County, Maryland pursuant to the authority of Title 8, Subtitle 18, Section 8-1808 of the Annotated Code of Maryland to add new Section 140-55.1 to Article XII, entitled Critical Area Protection of Chapter 140 of the Dorchester County Code entitled Subdivision Regulations to provide that any person including a contractor, property owner or any other person who committed, assisted, authorized or participated in a violation of Title 8, Subtitle 18 of the Annotated Code of Maryland entitled "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program" or a violation of this Chapter relating to land and property located in the critical area and regulated by this Chapter shall be guilty of a civil infraction under Chapter 147 of the Dorchester County Code, and providing for a maximum civil penalty of \$10,000.00 for such violation; and providing for certain factors to be considered in making a civil penalty assessment, and providing that the director of planning is authorized to issue citations for such violations and to determine the amount of the civil penalty to be assessed, and to authorize the Director of Planning to issue with the citation for civil infractions an Administrative Abatement Order requiring the owner, property owner or person to abate or to correct the critical area violation under this Chapter or to cease work or activity being performed in the critical area under this Chapter.

Introduced, read first time, ordered posted on official bulletin board of County, County Office Building, 501 Court Lane, Cambridge, Maryland, 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, March 2, 2010, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 7:05 P.M.

By order:


Jane Baynard, County Manager

cd2:Jan.10
140-55.1Bill.Pub/bmk

**COUNTY COUNCIL
OF
DORCHESTER COUNTY, MARYLAND**

BILL NO. 2010 - 5

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND PURSUANT TO THE AUTHORITY OF TITLE 8, SUBTITLE 18, SECTION 8-1808 OF THE ANNOTATED CODE OF MARYLAND TO ADD NEW SECTION 140-55.1 TO ARTICLE XII, ENTITLED CRITICAL AREA PROTECTION OF CHAPTER 140 OF THE DORCHESTER COUNTY CODE ENTITLED "SUBDIVISION REGULATIONS" TO PROVIDE THAT ANY PERSON INCLUDING A CONTRACTOR, PROPERTY OWNER OR ANY OTHER PERSON WHO COMMITTED, ASSISTED, AUTHORIZED OR PARTICIPATED IN A VIOLATION OF TITLE 8, SUBTITLE 18 OF THE ANNOTATED CODE OF MARYLAND ENTITLED "CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA PROTECTION PROGRAM" OR A VIOLATION OF THIS CHAPTER RELATING TO LAND AND PROPERTY LOCATED IN THE CRITICAL AREA AND REGULATED BY THIS CHAPTER SHALL BE GUILTY OF A CIVIL INFRACTION UNDER CHAPTER 147 OF THE DORCHESTER COUNTY CODE, AND PROVIDING FOR A MAXIMUM CIVIL PENALTY OF \$10,000.00 FOR SUCH VIOLATION; AND PROVIDING FOR CERTAIN FACTORS TO BE CONSIDERED IN MAKING A CIVIL PENALTY ASSESSMENT, AND PROVIDING THAT THE DIRECTOR OF PLANNING IS AUTHORIZED TO ISSUE CITATIONS FOR SUCH VIOLATIONS AND TO DETERMINE THE AMOUNT OF THE CIVIL PENALTY TO BE ASSESSED, AND TO AUTHORIZE THE DIRECTOR OF PLANNING TO ISSUE WITH THE CITATION FOR CIVIL INFRACTIONS AN ADMINISTRATIVE ABATEMENT ORDER REQUIRING THE OWNER, PROPERTY OWNER OR PERSON TO ABATE OR TO CORRECT THE CRITICAL AREA VIOLATION UNDER THIS CHAPTER OR TO CEASE WORK OR ACTIVITY BEING PERFORMED IN THE CRITICAL AREA UNDER THIS CHAPTER.

SECTION ONE: Acting under the Authority of Title 8, Subtitle 1, Section 8-1808 of the Annotated Code of Maryland, (The "Act") be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that New Section 140-55.1 to Article XII entitled "Critical Area Protection" be added to Chapter 140 of the Dorchester County Code to read as follows:

ARTICLE XII**CRITICAL AREA PROTECTION****§ 140-55.1 Civil Penalties in the Critical Area and Administrative Abatement Orders****A. Civil Penalties in the Critical Area:**

In addition to any other penalties for violations of this Chapter, any person, including a contractor, property owner or any other person who committed, assisted, authorized or participated in a violation of Title 8, Subtitle 18 of the Annotated Code of Maryland entitled "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program" or a violation of this Chapter relating to land and property within the Critical Area, shall be guilty of a civil infraction under Chapter 147 of the Dorchester County Code.

1. The maximum civil penalty for each violation under this section shall be \$10,000.00;
2. Each violation constitutes a separate offense;
3. Each calendar day that a violation continues constitutes a separate offense;
4. For each offense, a person shall be subject to a separate civil penalty;
5. Civil penalties for continuing violations shall accrue without a requirement for an additional assessment, or notice;
6. On consideration of all the factors included in Article XII, entitled "Critical Area Protection" of this Chapter, and any other factor in the County's Critical Area Program, the Director of Planning shall impose the amount of the civil penalty;
7. In determining the amount of the civil penalty to be assessed under this section, the Director of Planning shall consider:
 - a. The gravity of the violation;
 - b. Any willfulness or negligence involved in the violation;
 - c. The environmental impact of the violation; and
 - d. The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to the state or local authorities for

performing, supervising, or rendering assistance to the restoration and mitigation.

8. In this section, "owner" or "property owner" includes two or more persons holding title to the property under any form of joint ownership;
9. In this section "Person" includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, including a contractor, property owner or any other person who committed, assisted, authorized or participated in a violation of Title 8, Subtitle 18 of the Annotated Code of Maryland entitled "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program" or a violation of this Chapter relating to land and property within the critical area;
10. The Director of Planning is hereby authorized to issue citations for civil infractions for critical area violations under this Chapter in accordance with Section 147-2 of the Dorchester County Code and the amount of the civil penalty or fine to be assessed under this section. All civil penalties or fines for civil infractions under this section shall be payable to the County;
11. If a final adjudication of a notice of violation results in a determination that a violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in addition to the cost of the hearing and any applicable mitigation costs; and
12. Application for a variance constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

B. Administrative Abatement Orders:

The Director of Planning is also authorized to issue with the citation for civil infractions an Administrative Abatement Order requiring the owner, property owner or person to abate or to correct a critical area violation under this Chapter or to cease work or activity being performed in the critical area. The Administrative Abatement Order shall be served with the citation for civil infraction pursuant to Chapter 147, Section 147-2 *et. seq.* of this Code. The Administrative Abatement Order shall be enforced pursuant to Section 147-6(F)(4) and Section 147-6(G) of Chapter 147 of the Dorchester County Code.

SECTION TWO: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND THAT GENERAL CODE PUBLISHERS IS DIRECTED TO CODIFY NEW SECTION 140.55-1 OF CHAPTER 140 IN THE DORCHESTER COUNTY CODE.

SECTION THREE: Be it further ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that this Bill shall be known as Bill No. 2010- 5 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage, or upon the Critical Area Commission approval, whichever is the later.

PASSED THIS 2nd DAY OF March, 2010.

ATTEST:

COUNTY COUNCIL OF
DORCHESTER COUNTY,
MARYLAND

BY: Jane Baynard
Jane Baynard, County Manager

Jay L. Newcomb
Jay L. Newcomb, President

APPROVED THIS 2nd DAY OF March, 2010.

ATTEST:

COUNTY COUNCIL OF
DORCHESTER COUNTY,
MARYLAND

BY: Jane Baynard
Jane Baynard, County Manager

Jay L. Newcomb
Jay L. Newcomb, President

NICHOLS - Aye

NEWCOMB - Aye

ELZEY - Absent

PRICE - Aye

TRAVERS - Aye

cd2:Jan.10
140-55.1Code.Bill/bmk